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Good practice recommendations on public participation in strategic environmental assessment

Note by the secretariat

Summary

The present recommendations were prepared by the secretariat, with the support of a consultant, in consultation with the Bureau under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment, and taking into account the comments by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its second and third meetings (Geneva, 27–30 May and 11–15 November 2013, respectively). The recommendations aim to support the application of the Protocol's provisions by Parties and future Parties as regards public participation, as well as to illustrate good practice in this field so as to promote early, timely and effective opportunities for such participation.

The recommendations were initially discussed at a meeting on public participation in environmental decision-making (Geneva, 29–30 October 2012), organized jointly with the Convention on Access to Information, Public Participation in Decision-making and

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Access to Justice in Environmental Matters (Aarhus Convention), in line with decision I/4 of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol (see ECE/MP.EIA/SEA/2). They incorporate comments and input from national focal points and experts under the Espoo Convention, the Protocol on Strategic Environmental Assessment and the Aarhus Convention received prior to, during and after the joint meeting. In addition, efforts have been made to ensure consistency between the present draft and the more general recommendations on public participation in environmental decision-making prepared under the Aarhus Convention.

The Meeting of the Parties to the Convention serving as Meeting of the Parties to the Protocol is invited to endorse the recommendations through decision II/8 (see ECE/MP.EIA/SEA/2014/L.1).

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I. Introduction to public participation in strategic environmental assessment

1. Public participation is a cornerstone of effective strategic environmental assessment (SEA). It can increase the transparency and credibility of decision-making, help ensure that all relevant issues are considered during the plan- or programme-making process and allow the early consideration of the public's opinions in the plan- or programme-making process. In turn, it can mobilize public support for the implementation of the plan or programme.

2. These good practice recommendations aim to improve public participation in SEA as provided for by the United Nations Economic Commission for Europe (ECE) Protocol on Strategic Environmental Assessment (SEA Protocol) to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). They offer a guide to the implementation of SEA Protocol obligations, illustrate good practice and provide ideas for more innovative practice.

3. The recommendations have been prepared in consultation with the Bureau under the Espoo Convention and its Protocol and were discussed at a workshop on public participation in environmental decision-making (Geneva, 29–30 October 2012) organized jointly with the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). They are additional guidance for the application of article 7 of the Aarhus Convention by its Parties, and complement the recommendations on public participation in decision-making in environmental matters prepared under that Convention. They should be read in conjunction with the *Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment* (Resource Manual).[1]

4. Throughout this guidance, "must" refers to the SEA Protocol's and Aarhus Convention's requirements, and "may" or "could" refer to additional good practice.

II. Public participation requirements in the Protocol on Strategic Environmental Assessment

5. The SEA Protocol requires the public to be given an opportunity to comment on draft plans or programmes and the associated environmental reports. It also recommends that, to the extent appropriate, Parties endeavour to provide public participation in SEA screening and scoping. Due account of public comments must be taken in decisions about the plan or programme. After the plan or programme is adopted, the public must be provided with information about the adopted plan and the SEA process in an "SEA statement". (See annex for a list of the Protocol's public participation requirements.)

6. Article 3 of the SEA Protocol additionally provides a number of general rights to the public, similar to those of article 3 of the Aarhus Convention, including to:

(a) Relevant assistance and guidance from officials and authorities;

(b) Recognition of and support for relevant associations, organizations or groups (e.g., non-governmental organizations (NGOs));

[1] Online publication (ECE/MP.EIA/17), available from http://www.unece.org/env/eia/pubs/sea_manual.html.

(c) Exercise rights under the Protocol without being penalized, persecuted or harassed, and without discrimination as to citizenship, nationality or domicile.

III. General principles of public participation in strategic environmental assessment

A. "The public" and "the public concerned"

7. The SEA Protocol defines "the public" as "one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups" (art. 2, para. 8). NGOs are thus part of the public. Even where an association, organization or group does not have a legal personality, where national legal frameworks so provide, they may be considered to constitute the public.[2]

8. The SEA Protocol does not define what is meant by "the public concerned", except that it must include relevant NGOs Here, article 2, paragraph 5, of the Aarhus Convention's definition may be followed, namely "the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest". The same could apply to organizations promoting health.

9. To implement the requirements of article 8, paragraph 3, and to ensure that plan-makers identify the public that should participate in a given SEA, Parties may define in their national legal framework what is meant by:

(a) The public, as per the SEA Protocol;

(b) The public concerned, as per the Aarhus Convention (see box 1);

(c) What constitutes "having an interest in" environmental decision-making;

(d) The requirements, if any, which environmental NGOs must meet in order to be deemed to "have an interest".

Box 1

Good practice in identifying the public concerned

When identifying who should be considered as the public concerned with respect to a proposed plan or programme, the plan-making authority could include:

(a) A wide range of interests, ensuring a well-balanced and inclusive involvement of the public. Many decisions with an environmental dimension also involve health, social and economic interests, and the corresponding interest groups could be included in the public participation in an equitable way;

(b) Groups that are hard to reach. Some members of the public may be willing but unable to participate (e.g., disenfranchised groups, such as older and younger people, migrants, people with low literacy). (see sect. V.A and V.B below). Others may be able but unwilling to participate (e.g., people with

[2] Ibid.

previous bad experiences, lack of time, or who see no benefits in participating). Efforts could be made to involve at least organizations representing such groups, as well as groups that are able and willing to participate;

(c) Groups that could potentially hinder the decision-making process, for example strong lobby groups or those that could influence the decision makers. These groups will voice their opinion anyway and it may be more efficient and effective to include them in the discussion at an early stage, to try to understand their concerns, take them into account and possibly find compromises.

Box 2

Public participation challenges: United States of America

Collaboration often only involves select local people who can attend SEA meetings on a regular basis and/or professionals from industry, non-profit organizations, or the government, whose expenses and time are covered as part of their jobs. This was a primary criticism of the Beaverhead-Deerlodge Partnership (BDP), a collaboration between United States conservation groups and timber companies to create a forest management plan for the Beaverhead-Deerlodge National Forest in Montana. The process used by BDP was criticized as giving "priority and a privileged voice to self-selected interests in managing national forests" because of the generally exclusive nature of stakeholder deliberations.[3]

B. Effective public participation

10. Article 8, paragraph 1, of the SEA Protocol requires public participation in SEA to be "effective". Effective participation means effective from the point of view of both:

(a) *The participants*: participants should be involved early and throughout the planning process, be allowed to fully express their views, and have these views considered by the plan-makers respectfully, seriously and in a spirit of mutual education;

(b) *The plan-makers*: public participation should aim to facilitate useful suggestions that help in the choice of alternatives and improve the plan or programme.

11. Effective opportunities for public participation may be:[4]

(a) *Well planned and focused* on negotiable issues relevant to the plan or programme. The public should know the aims, procedure and expected outcomes of the SEA process;

[3] M. Hourdequin et al., "Ethical implications of democratic theory for U.S. public participation in environmental impact assessment", *Environmental Impact Assessment Review*, No. 35 (2012), pp. 37–44.

[4] The criteria set out in this paragraph are based on P. André et al., "Public Participation: International Best Practice Principles", Special Publication Series No. 4 (Fargo, United States, International Association for Impact Assessment, 2006) and K. Arbter et al., The Public Participation Manual: Shaping the Future Together (Vienna, Austrian Ministry of Environment and the Austrian Society for Environment and Technology, 2007).

(b) *Open to mutual gains for planners and participants*. This may require being open to a broader scope than the plan objectives alone, and involve promoting cooperation and consensus rather than confrontation;

(c) *Supportive of participants* through an adequate diffusion of information on the plan or programme and on the planning process. Capacity-building, facilitation and assistance could be provided, particularly for groups that would not otherwise have the capacity to participate and in regions where there is no culture of plan-making;

(d) *Efficient*. Because SEA is resource consuming (human, financial, time) for the public, efficient SEA will ensure more willing participation;

(e) *Open and transparent*. People who are affected by a plan or programme and are interested in participating must be given access to all necessary information and be able to participate in meetings and hearings related to the SEA process. Information and facilitation for such participation could be provided;

(f) *Context-oriented*. Because many communities have their own formal and informal rules for public access to resources, conflict resolution and governance, plan-making could be adapted to the cultural, social, economic and political dimensions of the affected communities;

(g) *Credible and rigorous*, and adhering to established ethics, professional behaviour and moral obligations. Facilitation of public participation by a neutral facilitator — one chosen jointly with the public, or where the public has the right to refuse a particular facilitator — improves the impartiality of the process, reduces tensions and the risk of conflict among participants, increases the confidence of the public to express their opinions and in the final decision and reduces opportunities for corruption. A code of ethics could be adopted;

(h) *Proportional*. The effort put into public participation in an SEA will depend on the characteristics and nature of the proposed plan or programme, and its potential environmental, including health, effects.

Box 3

Public participation good practice and challenges: British Columbia and Canada

It was clear from examining the one [environmental assessment (EA)] widely considered to be successful by the First Nations, the proponent and the consultants, that sound, positive and respectful relationships were at the heart of why that EA was successful. Conversely, the failure of relationships has been identified by all participants as being at the heart of why the EA process fails, even if the EA itself eventually receives government approval.[5]

[5] Annie Booth and Norman Skelton, "Improving First Nations' participation in environmental assessment processes: recommendations from the field", *Impact Assessment and Project Appraisal*, vol. 29, No. 1 (March 2011), pp. 49–58.

12. Techniques for effective public participation in SEA may include:

(a) *Capacity-building*: Explaining planning and SEA processes in a non-technical manner, so that participants understand the main steps of the processes and how their views will contribute to them;

(b) *Clarifying the relevance of the plan or programme and its impacts*, for instance by focusing on its impacts on people's health;

(c) *Publication of non-technical summaries* of SEA information in a variety of formats;

(d) *Use of informal meetings, workshops, and small group discussions* rather than (or in addition to) formal meetings in official government venues or convention centres;

(e) *Careful use of facilitators* at meetings to ensure that participants are fully respected, are not rushed and have plenty of time to speak, and that silent members' opinions are elicited.

C. Timing

13. Early and sustained involvement of the public in SEA helps to build trust among participants, improve screening and scoping of the SEA, increase opportunities to modify the plan/programme in response to public comments and opinions, reduce the risk of rumours and give plan-makers more confidence in their decisions. The SEA Protocol requires "early, timely and effective opportunities for public participation, when all options are open" (art. 8, para. 1), "timely public availability of the draft plan or programme and the environmental report" (art. 8, para. 2), and the opportunity for the public to express its opinion on the draft plan or programme and the environmental report "within a reasonable time frame" (art. 8, para. 4). Involving the public in the identification of plan/programme options and the choice of preferred options is likely to be particularly effective, as it helps to meet these conditions and shows the open-mindedness of the plan-makers.

14. "Early" and "timely" mean early and timely from the point of view of the public seeking to participate effectively in the SEA process. These requirements also take into account the characteristics of the proposed plan or programme and its potential environmental, including health, effects.

15. The Protocol does not specify time frames for public participation at various stages of the SEA process. As such, a national framework may set fixed time frames for each phase, or adopt a flexible approach whereby the plan-making authorities are responsible for setting time frames appropriate to the circumstances of that case.[6] The flexible approach allows plan-making authorities to take into account the specific characteristics of the proposed plan/programme. However, it could result in uncertainty and inconsistency between public authorities. Thus, if the flexible approach is to be used, the national legal framework could specify:

(a) A minimum time for the public to express its opinions on the draft plan/programme and environmental report (art. 8);

[6] See Case C-474/10, *Department of the Environment v. Seaport (NI) Ltd and others*, European Court of Justice, 20 October 2011.

(b) A maximum time after the plan/programme is adopted for the publication of the plan/programme and SEA statement (art. 11, para. 2);

(c) Minimum times for any public participation in screening (art. 5, para. 3) and scoping (art. 6, para. 3).[7] The minimum times will depend on the complexity of the plan and environmental report, but in all cases should allow for a careful examination of the relevant documents and the development of public views on them.

16. The following points could be considered when laying down such time frames:

(a) A complex or national-level plan will require more time than a simple or local level programme. The time frame will also be influenced by characteristics of the public and how the environmental report is presented. It is unlikely that a period of less than four weeks will be a "reasonable time frame" for any plan or programme;

(b) The same time frame could be allowed for comments on the environmental report and on the draft plan/programme. The time frame begins on the day that the plan or programme and its environmental report are made publicly available, and the public is properly and effectively notified of this fact. If, for instance, the environmental report is published a week after the plan is published, then the public participation period starts with the publication of the environmental report.

17. Neither the SEA Protocol nor the Resource Manual specify what is meant by the requirement of the article 8, paragraph 1, to provide opportunities for public participation "when all options are open". All options are no longer open where, for instance, funding has been provided for a component of some options but not others (e.g., a road that facilitates development in a particular area); a public announcement of a preferred option has been made by the competent authority even though the plan or programme has not yet been adopted; or development consent has been given by the public administration to a project, the execution of which otherwise would depend on the plan or programme.

18. The national legal framework could provide for the possibility for repeated opportunities for public participation or for the extension of the time frames, for example:

(a) Where there is doubt that the public concerned has been notified effectively;

(b) Where significant new information comes to light or the circumstances change in some significant way necessitating the public to be provided with a further opportunity to participate.

IV. Public participation at different stages of strategic environmental assessment

19. The general principles of section III above apply to each of the different stages of strategic environmental assessment as set out below.

A. Screening

20. At the screening stage, to the extent appropriate, each Party shall endeavour to provide opportunities for the participation of the public concerned. "Where appropriate"

[7] See *Good Examples of EIA and SEA Regulation and Practice in five Countries* (Brno, Czech Republic, Justice and Environment, 2008), available from http://www.justiceandenvironment.org/_files/file/2009/06/eia-sea_good_examples.pdf..

could include where the public will be particularly affected by the plan or programme, where different groups would be affected differently, where the plan or programme is likely to be contentious, or where innovative solutions are sought. If a plan or programme is not expected to require SEA, then involving the public at the screening stage may avoid later accusations that the plan or programme was prepared without the full range of necessary information.

21. Annex III to the SEA Protocol provides criteria for determining the likely significant environmental, including health effects, of a plan or programme. A screening document containing information according to annex III could be produced. Screening questions related to annex III could elicit information from the public that is not otherwise readily available. These may include:

(a) Would projects resulting from the plan/programme have a significant effect on the environment, including health? (annex III, para. 2);

(b) Are there existing environmental, including health, problems in the area that could be affected by the plan/programme? (annex III, para. 4);

(c) Could the plan/programme have significant environmental, including health, effects? (annex III, para. 5);

(d) Could the plan/programme have a significant environmental, including health, effects on residents of another country? (annex III, para. 7);

(e) Could the plan/programme affect a valuable or vulnerable area? (annex III, para. 8).

22. If Parties find it appropriate to provide opportunities for public participation in screening, then the public could be notified of these opportunities as set out in box 4 below.

Box 4

Good practice for public notification under article 5, paragraphs 3 and 4, article 6, paragraph 3, article 8, paragraph 2, and article 11, paragraph 2

1. Under article 8, paragraph 1, notification must be "early, timely and effective" (see sect. III above).

2. Public notice could be placed on the website and/or the public noticeboard of the public authority competent to take the decision. This could be supplemented with other active forms of notification, including:

(a) Public notice in the mass media (radio, television, newspapers) corresponding to the geographical scope of proposed activity (from international to local). It may be more effective to publish the notification in a popular daily local newspaper rather than in a weekly official journal, and in media with larger rather than smaller circulations;

(b) Public notices on noticeboards in places highly frequented by the public concerned and customarily used for the purpose (e.g., at community halls, schools, post offices, etc.);

(c) An article in a newsletter put out by the planning authority;

(d) Mail shots/individual notification.

3. The notification of the public could address:

(a) The opportunities for the public to participate, taking care to describe the scope of the public's ability to influence the outcome realistically so as to avoid exaggerated expectations;

(b) An overview of the public participation process, including a summary of the most important information;

(c) The precise details as to where to submit comments or questions;

(d) The timeline for the transmittal of comments or questions, taking into account that the means of notification used may have an impact on the timing for the notification to effectively reach the public concerned;

(e) The means by which comments or questions can be submitted (orally or in writing, electronically, etc.);

(f) How the plan/programme affects, and is affected by, other plans/programmes and projects.

4. Public authorities could ensure that the notification and all accompanying information remain available to the public throughout the public participation process, so that members of the public learning of the planning and SEA processes later on still have access to all the information they need to be able to participate effectively.

23. Regardless of whether a plan or programme is found to require SEA, article 5, paragraph 4, requires that information on the screening outcome must be made available to the public in a timely manner. The recommendations for public notification set out in box 4 could also be followed for this.

B. Scoping

24. Determination of the relevant information to be included in the environmental report — scoping — must include consideration of "the interests of the public" (art. 7, para. 2 (c)), and "to the extent appropriate" each Party shall endeavour to provide opportunities for the participation of the public concerned in scoping (art. 6, para. 3). It may also be useful to identify and inform any other affected Parties at the scoping stage, so that they can consult their public on the scope of the SEA if appropriate. If Parties find it appropriate to provide opportunities for public participation in scoping, then the public could be notified of these opportunities in accordance with the recommendations in box 4.

25. A scoping document containing relevant aspects of annex IV of the SEA Protocol — for instance, the main objectives and draft contents of the plan, relevant aspects of the current state of the environment, relevant environmental problems and environmental objectives — could be produced. Scoping questions related to annex IV that take into account the interests of the public (art. 7, para. 2) could elicit information from the public that is not otherwise readily available. These may include:

(a) What current environmental, including health, aspects and problems are of particular concern? Which are not of particular concern? (annex IV, paras. 2 and 4);

(b) What areas are likely to be significantly affected by the plan/programme? What aspects of the current state of the environment, including health, should be identified and described for these areas? What areas are not likely to be significantly affected? (annex IV, para. 3);

(c) What environmental, including health, objectives — particularly those established at the local level — are relevant to the plan/programme? (annex IV, para. 5);

(d) What are likely significant environmental, including health, effects of the plan/programme? Which are unlikely? (annex IV, para. 6);

(e) What measures to prevent, reduce or mitigate any significant adverse effects on the environment, including health, resulting from the plan/programme should be considered? (annex IV, para. 7);

(f) What reasonable alternatives to the plan/programme should be considered? (annex IV, para. 8, and art. 7, para. 2);

(g) What are likely significant transboundary environmental, including health, effects of the plan/programme? What effects are unlikely to be significant? (annex IV, para. 10).

Box 5

Good practice example: Slovakia

The SEA of the Slovak Energy Policy 2000 started at the initial phase of policy preparation. The Ministry of Economy developed an outline energy policy for comment by NGOs, then a discussion document for parliamentary meetings. Once a draft energy policy was available, its availability was notified in the *Economic News* (Hospodárske noviny), and the full text was made available on the Internet and at Government offices. Two months were allowed for public review and submission of comments on the SEA scope. More than 400 comments were received.[8]

26. To ensure that all the issues that are important to the public are covered in the SEA, it is better to include more rather than fewer topics.

C. Availability of the draft plan/programme and environmental report

27. Public availability of documents implies:

(a) Notification that the documents are available for perusal, following the recommendations of box 4;

(b) Barrier-free availability of the documents.

28. Barrier-free availability of documents could include:

(a) Providing the information in a range of means, including at least electronic and printed forms;

(b) Presenting the information in a clear, concise and non-repetitive form, and with a non-technical summary;

(c) Tailoring the information provided and the means of communication to the target groups;

(d) Presenting the information in a simple and accessible way, including in a language that the public — including relevant ethnic minorities or migrants — can understand. Where a large proportion of the population uses a different language as their

[8] Barry Dalal-Clayton and Barry Sadler, *Strategic Environmental Assessment: A Sourcebook and Reference Guide to International Experience* (London and Sterlin, Virginia, Earthscan, 2005).

main or only form of communication, then relevant parts of the documents could be translated into that language;

(e) Good quality presentation, i.e., easy to read or hear;

(f) Providing accurate, reliable and balanced information which presents different aspects of the topic and avoids any manipulation;

(g) Providing the environmental report in convenient locations, for instance in libraries, schools, post offices or government offices. It is good practice for opening hours for these locations to be adequate and clearly posted, and for a clear work surface and privacy to be provided so that readers can concentrate and take notes;

(h) Allowing the public to examine SEA-related information free of charge. The public must be able to receive copies of information upon request, at a reasonable charge or no charge. It is recommended that when public authorities intend to charge a fee for copying information, the schedule of costs is made available in advance and in a prominent place. The public could be allowed to make copies on-site using their own means of copying, free of charge, including taking digital photographs of relevant documentation;

(i) Following the recommendations in paragraph 41 below for disenfranchised people.

Box 6

Good practice example: Norway

To increase public participation in the development of the Nordland County Council (Norway) regional climate plan 2010, planners prepared an abridged version of the plan, published letters in local newspapers encouraging people to participate and used Facebook, Twitter and blogging. Planners also went on a month-long tour of Nordland in an electric vehicle. They used everyday items such as wellies and wine gums (representing climate refugees) to start discussions; debated climate and energy issues in general and related these issues to local matters; and attracted people by serving waffles and drinks. As a result, general awareness of the plan was raised, many comments on the plan were received, people were positive about meeting Council officers and Nordland County Council is now associated with climate and energy issues.

D. Opportunity for the public to express its opinions

29. Article 8, paragraph 4, of the SEA Protocol requires Parties to ensure that the public concerned has the opportunity to express its opinion on the draft plan or programme and the environmental report within a reasonable time frame. The public could also be given opportunities to gain further information, discuss or ask questions on the draft plan or programme and environmental report. These could include displays and exhibits (unstaffed and staffed), information hotlines (telephone or Internet), public hearings and workshops. The Resource Manual discusses the advantages and disadvantages of these approaches. Planning officers and/or consultants hired by them could help the public in examining the SEA documents, for example by explaining the information and its relevance to the decision-making process. They could focus on complex and uncommon concepts and anticipate possible questions from the public.

30. The public are entitled to submit any opinions on the draft plan/programme and environmental report that they consider relevant, free of charge and without undue

formalities. The public are not required to provide any evidence as to the sources of information they used, or any justifications and/or reasoning for their views. However, such sources may improve the evidence in the environmental report and hence lead to a knowledge-based decision.

31. Written opinions by the public may be submitted either to the plan-making authority or appropriate impartial body acting under the direction of that authority. If the latter approach is used, that body could collate all opinions received and deliver them in their entirety — not only in an aggregated form — to the responsible public authority. Parties could establish clear procedures for the submission of written opinions by the public during the entire period of time envisaged for public participation, including before, during or after any public hearings.

32. Public hearings or inquiries in which the public may submit oral opinions may be an effective form of public participation. One or more such hearings could be held when merited by:

(a) The scale and geographical scope of the plan or programme and/or its impact;

(b) The controversial or high-profile nature of the plan or programme;

(c) Issues and opinions arising out of public participation;

(d) The range or location of the public concerned;

(e) A need by the competent authority to ask direct questions of witnesses so as to clear up misunderstandings, more clearly understand public views, or allow cross-examination of conflicting views;

(f) The need for the public to express their opinions in oral rather than written form.

33. Any hearing or inquiry should:

(a) Be organized in a convenient location for the public concerned, and in a venue that is suitable for the purpose;

(b) Be at a convenient time to ensure participation of the full range of the public;

(c) Be notified sufficiently in advance so that the public is able to prepare to participate effectively;

(d) Allow sufficient time and provide fair and proportionate opportunities for all major interests to be heard;

(e) Provide an appropriate balance between time devoted to the provision of background information and time devoted to questions and discussion;

(f) Allow the public to express their opinions — in oral form only if they wish — without having to have legal representation;

(g) Allow opportunities for the public to distribute written statements and corroborating evidence, and to present evidence through the testimony of witnesses.

34. Other additional ways for the public to express their opinion could be considered, including printed material inviting comments, Internet or web-based consultations, questions and response sheets, surveys, workshops and advisory committees. The Resource Manual discusses advantages and disadvantages of these approaches.

Box 7

Good practice example: the Netherlands

The SEA for the Netherlands Zuiderzee railway line:

contributed to an extensive process of consultation which left stakeholders feeling included and that their views were being taken seriously. This served as an incentive for them to reflect on their own frames and to include the interests of others in their preference for various options. The public discussion about possible routes for the railway extended over many hearings in which stakeholders and experts met. The project bureau tried actively to stimulate dialogue about these options between these groups. The fact that there were multiple possible routes might have helped in reassuring residents that the alternative that was closest to their own backyards was only one of many that might be chosen.[9]

E. Decision

35. Decision makers must "take due account" of comments from the public when the plan or programme is adopted. This does not mean that all suggestions must be followed, but that comments should be considered respectfully, seriously and in a spirit of mutual education.

36. It is good practice for planning authorities to document how public comments were taken into account, what changes were made to the plan or programme, or, if no changes were made, explaining why not. Decision makers could refrain from simply stating that a comment has been "noted" (or similar), as this does not indicate that they have taken due account of the comment.

Box 8

Good practice example: Spain

Participation in Spain's Sustainable Rural Development Programme led to nearly 700 responses, and nearly 1,200 suggestions for improving the programme. Of these, 46 per cent were about the programme actions, SEA and rural strategy, and 85 per cent of these suggestions were accepted. They included guaranteed treatment of waters for all natural protected areas, enforcement of environmental issues and guaranteed public participation at local and regional levels of decision-making.

F. Strategic environmental assessment statement

37. Once the plan or programme is adopted, decision makers must provide the public — not just the public concerned, and specifically including the transboundary public — with information about the adopted plan or programme, and how the SEA process has informed

[9] A. van Buuren and S. Nooteboom "The success of SEA in the Dutch planning practice: How formal assessments can contribute to collaborative governance", *Environmental Impact Assessment Review* vol. 30, No. 2 (2005), pp. 127–135.

and influenced it (SEA statement). The SEA statement must, inter alia, include information about how public comments have been taken into account: the approach in paragraph 36 above could be used for this.

38. The public could be notified of the availability of these documents as set out in box 4. Document "availability" could be interpreted in accordance with paragraphs 27 and 28 above. The public could also be given information on the consequences of the adoption of the plan or programme, and on legal remedies against the plan or programme if they exist in the national legal system.

39. The SEA Protocol does not specify how soon after the adoption of the plan or programme the required information must be made available. However, good practice suggests that a reasonable period could be within a month of the plan adoption.

V. Issues regarding public participation in strategic environmental assessment

A. Participation of disenfranchised people

40. People who are traditionally disenfranchised from SEA may include the elderly, the young, the disabled, the poor, minorities and people living in remote locations. Individuals from these groups could face particular problems in using or accessing the Internet; reading long and technical documents; or engaging in formal or professional situations. Traditionally, their views may not have been taken seriously. As a result, they may feel unwilling or unable to express their views in standard forums.

41. All of the public concerned, including disenfranchised people, must be given an effective opportunity to participate in screening and scoping where appropriate, and to express their opinion on the draft plan or programme and the environmental report. The SEA Protocol does not specify how opinions should be expressed, but specifies that the opportunity must be "effective". In addition to the approaches discussed at paragraphs 11 and 12, this may require the use of different techniques for public participation than those of typical plan-making and SEA. Depending on the group, this could include:

(a) Publication of non-technical summaries and relevant parts of the environmental report in a variety of formats, for instance in minority languages, Braille, and social media;

(b) Holding meetings in local, remote or rural locations as well as larger, central, urban locations;

(c) Actively encouraging disenfranchised groups to participate in the SEA process, for instance by posting notices in specific communities, having stalls or giving talks at events run by specific groups, or requesting their participation via community leaders;

(d) Involving pre-existing groups and representatives of disenfranchised people. These groups and representatives may already have acquired an understanding of the planning and SEA processes and be able to participate in more traditional ways; will know best how to communicate with disenfranchised people; may have ideas about who could be involved in participatory processes; and may be able to use non-traditional ways of disseminating information and collecting people's views;

(e) Providing financial resources where effective public participation would otherwise be hampered by lack of resources. European Union (EU) member States can use

EU funding for capacity-building of NGOs for SEAs on plans or programmes where EU co-financing is involved, such as the Operational Programmes for Cohesion Policy.

B. Participation where the relevance of a plan or programme is not obvious

42. For plans or programmes related to sparsely populated areas, for instance marine plans or plans for new towns, the public concerned may be limited or not obvious. Indeed, development in such areas may be viewed by the rest of the public as a way of avoiding the need to develop closer to where people live. In such cases, comparison of alternatives, including the "business as usual" scenario, could be particularly important. This may show that development in more populated areas, where there will be more public opposition, would nevertheless have fewer significant environmental or health effects than development in the sparsely populated area.

43. In such cases opinions could be sought from organizations that represent the interests of the sparsely populated area, including environmental and health NGOs, or organizations that are familiar with and sympathetic to the unique aspects of the area (e.g., groups representing rural interests). A wide range of views could be sought.

44. Members of the public may also struggle to see the relevance of some plans/programmes, particularly strategic, national level plans, to their lives even though these plans may end up significantly affecting them. For instance, a national transport plan may directly lead to a new road or airport being built near somebody's house, but without knowing the plan contents the householder may not feel that the plan relates to them. Lack of public participation at this stage may not indicate lack of interest or concern about the plan's impacts, but rather a lack of understanding of the relevance of the plan. If this issue is not addressed up front, it could result in the media or politicians identifying the issue and conveying it in a sensational manner; or in the public subsequently finding out, feeling betrayed, and delaying the plan's implementation through protests or legal challenges.

45. Where a plan or programme could have significant impacts but these are not obvious to the public, Parties could put measures in place to ensure that the public becomes aware of these impacts. Proactive measures for dealing with this issue may include:

(a) Publication of environmental reports for sub-areas of the plan or programme, as well as for the plan or programme as a whole;

(b) Requesting local-level government organizations to identify plan issues that could particularly affect their constituents and to notify the constituents of these issues early in the consultation process;

(c) Public notices tailored to sub-areas of the plan or programme, which make the public aware of aspects of the plan/programme that could particularly affect them.

46. Many plans or programmes will affect future generations. Clearly, it will not be possible for future generations to participate directly in the SEA process, but the interests of future generations could be represented, for instance, by:

(a) Involving young people, or people who represent their interests;[10]

(b) Involving people with a specific remit to represent future generations;

[10] Children and youths are one of the nine United Nations Environment Programme stakeholder groups

(c) Focusing in the SEA process on long-term impacts, non-renewable resources, genetic pools, environmental limits and standards, and resilience;

(d) Using participatory scenario techniques to identify possible long-term impacts of the plan or programme, and discussing possibilities to mitigate or deal with such impacts.

Box 9
Good practice example: Italy

The Italian programme "La città dei bambini" (children's city) proposes a major shift in thought: substitute the child for the average citizen, an adult worker. This does not necessarily mean providing more child services, but that the viewpoint of local administrators should be lowered to a child's level so as to include everyone. The presence of children in public spaces, especially children without adult supervision, acts as an "environmental indicator". One approach is to involve children aged 6–11 in a children's council that recommends improvements to mayors. In Fano, requests have included closing certain streets to traffic, freer access to sports installations, use of squares as places to play and the creation of new play areas.[11]

VI. Participation in a transboundary context

47. Article 10, paragraph 3, of the SEA Protocol requires transboundary consultation where the "Party of origin" that causes the impacts considers that the implementation of a plan or programme is likely to have significant transboundary effects;[12] or where a party likely to be significantly affected (the "affected Party") so requests. The public (including NGOs) of the affected Party could be treated as favourably as the public in the Party of origin, and the recommendations of sections III to V above apply as appropriate to the public of the affected Party. The SEA Protocol requires transboundary consultation only from the environmental report stage onwards, but it is good practice to also involve the transboundary public at earlier stages.

48. The Espoo Convention makes both the Party of origin and the affected Party responsible for the distribution of environmental information to the public and collection of comments from the public in the transboundary environmental impact assessment (EIA) of projects. A similar approach was taken for SEA, as provided in article 10, paragraph 4, of the SEA Protocol. Most Parties already have an established point of contact for transboundary public consultations on EIA, and the same point of contact could be used for SEA, in line with decision I/2 of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol (see ECE/MP.EIA/SEA/2). A possible approach is for the Party of origin to submit the draft plan or programme and the environmental report to the affected Party so that it could inform its own public; public comments could then be submitted either directly to the competent authority of the Party of origin or collated by the affected Party and sent to the Party of origin.

[11] See http://www.childfriendlycities.org/ and http://www.lacittadeibambini.org/pubblicazioni/Citta-bambini.pdf.

[12] The criteria set out in annex III of the SEA Protocol can assist with this.

49. Matters which may be discussed and implemented jointly between the Party of origin and the affected Party when planning the transboundary consultation process for a particular SEA could include:

(a) Who the public concerned is, including NGOs;

(b) How consultations are carried out, including timing and details of notification;

(c) Establishment of an SEA steering group or sounding board comprised of representatives of the public from both Parties;

(d) What materials will be made available by the Party of origin and when;

(e) Translation of documents, interpretation during any meetings and/or running of meetings by officials who are fluent in the main language of the affected Party;

(f) How to deal with any cultural issues, disenfranchised groups, etc.;

(g) Time frames for the public to respond, so that they are realistic both from the participants' and the planning authorities' point of view, taking into account issues such as different countries' holidays;

(h) How the Parties are informed of the consultations outcomes and their use.

50. Parties could put in place arrangements with other countries or regions, in particular with neighbouring or downstream countries, to facilitate the reciprocal participation of the public in those countries in SEA. This could use existing systems of transboundary consultation or not; and be on an ad hoc basis or by forming a permanent working group. Such arrangements may cover:

(a) Timing of public participation. Other affected Parties could be identified and notified at the SEA screening or scoping stage, since notification under article 10 of the Protocol might otherwise come too late to influence key aspects of the environmental report;

(b) Time frames for public participation. The time frames for public participation that involves a transboundary element could be at least as long as for those that do not in order to account for cultural and communication problems. For project EIA, the notification period generally ranges from two weeks to three months, with an average of about one month; and the comment period ranges from three weeks to three months, with an average of about two months.[13] SEA could have similar time frames. The timescale for public participation begins when the relevant documents become available to the public concerned and the public is notified of this fact in the affected Party, not when they are made available by the Party of origin to the affected Party;

(c) Mechanisms for notifying the public about the commencement of the plan-making process, their possibilities to participate and, in due course, the decision taken;

(d) Translation of documents and interpretation during meetings. The Implementation Committee under the Espoo Convention recommends that, to provide to the public of the affected Party the same opportunity to comment as the public of the Party of origin, relevant parts of the environmental report could be translated into a language that the public of the affected Party can understand.[14] This includes at least the non-technical

[13] See *Review of implementation of the Convention on Environmental Impact Assessment in a Transboundary Context (2006-2009)* (ECE/MP.EIA/16).

[14] ECE, *Opinions of the Implementation Committee (2001-2010)* (October 2011). Available from http://www.unece.org/env/eia/pubs/ic_opinions_2010.html.0

summary and relevant parts of the environmental report. The Committee also recommends that the environmental report should include a separate chapter on transboundary impacts to facilitate translation; and that, unless otherwise provided for, the burden of translation should fall on the Party of origin. Similar arrangements could be used for SEA;

(e) What action the Party of origin will take if the affected Party does not convey its public's opinions within the agreed time frame.[15] Public participation is not effective and timely, as required by article 8, paragraph 1, of the SEA Protocol, if the public's views are not forwarded punctually by the affected Party to the Party of origin.

Box 10

Good practice example: Ireland and the United Kingdom of Great Britain and Northern Ireland

The Irish Lough Agency is a cross-border Irish-United Kingdom agency that aims to promote the development of Lough Foyle and Carlingford Lough (water bodies) for commercial and recreational purposes in respect of marine, fishery and aquacultural matters. It runs joint public consultation processes for new regulations regarding the loughs, consistent with both countries' legal requirements for consultation, and treating both countries' publics equally.

[15] Parties' responses to this problem vary widely (see ECE/MP.EIA/16).

Annex

[English only]

Public participation requirements in the Protocol on Strategic Environmental Assessment

Screening

Article 5, paragraph 3: To the extent appropriate, each Party shall endeavour to provide opportunities for the participation of the public concerned in the screening of plans and programmes under this article.

Article 5, paragraph 4: Each Party shall ensure timely public availability of the conclusions pursuant to paragraph 1, including the reasons for not requiring a strategic environmental assessment, whether by public notices or by other appropriate means, such as electronic media.

Scoping

Article 6, paragraph 3: To the extent appropriate, each Party shall endeavour to provide opportunities for the participation of the public concerned when determining the relevant information to be included in the environmental report.

Environmental report

Article 7, paragraph 2: The environmental report shall, in accordance with the determination under article 6, identify, describe and evaluate the likely significant environmental, including health, effects of implementing the plan or programme and its reasonable alternatives. The report shall contain such information specified in annex IV as may reasonably be required, taking into account . . . the interests of the public.

Public participation

Article 8, paragraph 1: Each Party shall ensure early, timely and effective opportunities for public participation, when all options are open, in the strategic environmental assessment of plans and programmes.

Article 8, paragraph 2: Each Party, using electronic media or other appropriate means, shall ensure the timely public availability of the draft plan or programme and the environmental report.

Article 8, paragraph 3: Each Party shall ensure that the public concerned, including relevant non-governmental organizations, is identified for the purposes of paragraphs 1 and 4.

Article 8, paragraph 4: Each Party shall ensure that the public referred to in paragraph 3 has the opportunity to express its opinion on the draft plan or programme and the environmental report within a reasonable time frame.

Article 8, paragraph 5: Each Party shall ensure that the detailed arrangements for informing the public and consulting the public concerned are determined and made publicly available.

For this purpose, each Party shall take into account to the extent appropriate the elements listed in annex V.

Transboundary consultations

Article 10, paragraph 4: Where [transboundary] consultations take place, the Parties concerned shall agree on detailed arrangements to ensure that the public concerned and the authorities referred to in article 9, paragraph 1, in the affected Party are informed and given an opportunity to forward their opinion on the draft plan or programme and the environmental report within a reasonable time frame.

Decision

Article 11, paragraph 1: Each Party shall ensure that when a plan or programme is adopted due account is taken of ... the comments received in accordance with articles 8 to 10.

Article 11, paragraph 2: Each Party shall ensure that, when a plan or programme is adopted, the public, the authorities referred to in article 9, paragraph 1, and the Parties consulted according to article 10 are informed, and that the plan or programme is made available to them together with a statement summarizing how the environmental, including health, considerations have been integrated into it, how the comments received in accordance with articles 8 to 10 have been taken into account and the reasons for adopting it in the light of the reasonable alternatives considered.